PROVINCE OF SASKATCHEWAN

REPORT
of the
COMMISSION
ON
JUDGES' SALARIES AND BENEFITS

Douglas A. Schmeiser, Q.C., Chairman
Olga Stinson
Gunnar Pedersen

March 27, 1991

91-05240/

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April 9, 1991

Honourable J. Gary Lane, Q.C.
Minister of Justice and Attorney-General
Province of Saskatchewan
Legislative Building
Regina, Saskatchewan
S4S 0B3

Dear Mr. Lane:

Re: Report on Judges' Salaries and Benefits

Please note that there is a typing error on Page 34 of the Commission's Report, listing the Summary of Commission Recommendations. The first sentence of Paragraph One should read: "Commencing October 1, 1990....", rather than "Commencing October 1, 1991....". The Report should be amended accordingly.

Yours sincerely,

D.A. Schmeiser

Douglas A. Schmeiser, Q.C., Chairman
Commission on Judges' Salaries and Benefits

DAS:ad

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Honourable J. Gary Lane, Q.C.
Minister of Justice and Attorney-General
Province of Saskatchewan
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Dear Mr. Lane:

Pursuant to The Provincial Court Amendment Act, 1990, of the Province of Saskatchewan, the Provincial Court Commission on judges' salaries, remuneration, allowances and benefits respectfully submits its report. The conclusions and recommendations are unanimous.

Respectfully yours,

D. A. Schmeiser

Douglas A. Schmeiser, Q.C.
Chairman

Olga M. Stinson

Olga Stinson

Gunnar Pedersen

I. THE MANDATE OF THE COMMISSION

On June 22, 1990, Section 5(5.4) to (5.7) of The Provincial Court Act was amended to read as follows:

> (5.4) On or before October 1, 1990 and on or before October 1 in every third year following 1990, the Lieutenant Governor in Council shall appoint three persons as commissioners to inquire into and make recommendations respecting:
>
> > (a) salaries, remuneration and allowances payable to judges pursuant to this Act; and
> >
> > (b) judges' benefits;
>
> for the three-year period commencing on October 1 of the year in which they are appointed.
>
> (5.5) No judge appointed pursuant to:
>
> > (a) this Act; or
> >
> > (b) the Judges Act (Canada), as amended from time to time;
>
> is eligible to be appointed as a commissioner pursuant to subsection (5.4).
>
> (5.6) The commissioners appointed pursuant to subsection (5.4) shall submit to the minister a report containing the recommendations they consider appropriate respecting the matters mentioned in that subsection.
>
> (5.7) The minister shall lay before the Legislative Assembly each report received by the minister pursuant to subsection (5.6) not later than the thirtieth sitting day after its receipt.

This amendment is in keeping with a trend across Canada to enhance judicial independence by avoiding direct salary negotiations between the judicial and executive branches of government.

By Order in Council 876/90 the following persons were appointed as Commissioners to inquire into and make recommendations

respecting judges' salaries, remuneration, allowances and benefits for the three-year period commencing on October 1, 1990:

Douglas A. Schmeiser, Q.C., Saskatoon
Olga Stinson, Regina
Gunnar Pedersen, Regina

The Commission members selected Douglas A. Schmeiser, Q.C. to serve as Chairman of the Commission.

II. THE WORK OF THE COMMISSION

The Commission was assisted in its deliberations by written presentations from the following bodies:

The Provincial Court Judges' Association of Saskatchewan
The Attorney General for Saskatchewan
The Canadian Bar Association, Saskatchewan Branch
The Saskatoon Criminal Defence Lawyers Association

At a hearing conducted by the Commission, representations were received from Silas Halyk, Q.C., Doug K.S. Kalesnikoff of the College of Commerce, University of Saskatchewan, and His Honour J.B.J. Nutting, on behalf of the Saskatchewan Provincial Court Judges' Association; Brian Barrington-Foote, Q.C., on behalf of the Attorney General for Saskatchewan; Mark Brayford, on behalf of the Saskatoon Criminal Defence Lawyers Association; Alan G. McIntyre and Aaron Fox, on behalf of The Canadian Bar Association, Saskatchewan Branch; His Honour B. Patrick Carey, Chief Judge of the Provincial Court; and some individual Judges of the Court.

Invitations to participate in the work of the Commission were also sent to the Law Society of Saskatchewan, Mr. Roy Romanov,

Q.C., Leader of the Opposition, and Dr. Linda Haverstock, Leader of the Saskatchevan Liberal Party, but were declined.

The Commission also reviewed the following documents, which were made available by interested parties:

- 1974 Report of the Survey of the Court Structure in Saskatchevan, December 23, 1974 (Hon. Emmett M. Hall)
- 1983 Federal Commission Report on Judges' Salaries and Benefits, October 6, 1983 (Hon. Otto Lang, Chairman)
- 1986 British Columbia Compensation Advisory Committee Report, December 31, 1986 (Anne Pomeroy Autor, Chairman)
- 1986 Federal Commission Report on Judges' Salaries and Benefits, February 27, 1987 (H. Donald Guthrie, Chairman)
- 1987 Prince Edward Island Commission of Inquiry Report on Provincial Court salaries, July 24, 1987 (Prof. H. Wade MacLauchlan)
- 1988 Report of the Ontario Provincial Courts Committee, September 27, 1988 (Gordon F. Henderson, Chairman)
- 1988 British Columbia Compensation Advisory Committee Report (D.J. Kidd, Chairman)
- 1989 Report on The Independence of Provincial Judges, Manitoba Law Reform Commission, June 28, 1989 (Clifford H.C. Edwards, Q.C., Chairman)
- 1989 New Brunswick Commission of Inquiry Report re Salaries of Provincial Court Judges, July 12, 1989 (Prof. H. Wade MacLauchlan, Chairman)
- 1989 Federal Commission Report on Judges' Salaries and Benefits, March 5, 1990 (E. Jacques Courtois, Q.C., Chairman)
- 1990 Nova Scotia Judicial Salary Tribunal Report, January 24, 1990 (Robert S. Huestis, Chairman)
- 1990 Judicial Survey, Canadian Association of Provincial Court Judges, September 1, 1990
- 1991 Nova Scotia Judicial Salary Tribunal Report, January 25, 1991 (C. William Hayward, Chairman)

Additional statistical information was provided to the Commission at the time of hearing. This material was extremely helpful in identifying the relevant factors in determining judicial salaries and benefits, judicial salaries and benefits elsewhere, and the processes by which other judicial compensation commissions had arrived at their conclusions. The Commission is grateful to the interested parties who made this material available to the Commission. The Commission also considered the decisions of the Supreme Court of Canada in Valente v. The Queen (1985) 24 D.L.R. (4th) 161 and The Queen v. Beauregard (1986) 30 D.L.R. (4th) 481 on the issue of judicial independence.

III. JUDICIAL INDEPENDENCE

Issues concerning judicial salaries and benefits should be approached from the perspective of judicial independence. One must remember that the judiciary is a branch of government separate from the legislature and the executive, and not subordinate in any way. Indeed, it is the responsibility of the judiciary to ensure that the legislature and the executive exercise only those powers which they rightfully possess. On occasion, the judiciary must stand between the executive and the individual in order to protect the latter from the state. Thus an independent judiciary is a cornerstone of a free and democratic society. Without it, the rule of law becomes the rule of man or the rule of bureaucracy.

Judicial independence is a historical tradition of our society, but it is also a statutory, constitutional, and

international law imperative. The Act of Settlement, 1700, 12 & 13 William III, c. 2, Article III provided as follows:

> That after the said limitation shall take effect as aforesaid judges commissions be made quam dieu se bene gesserint and their salaries ascertained and established but upon the address of both Houses of Parliament it may be lawfull to remove them.

Of particular significance here is the reference to "salaries ascertained and established".

The statutory requirement of judicial independence, which may also be termed quasi-constitutional, is found in section 2(f) of the Canadian Bill of Rights, providing that "no law of Canada shall be construed or applied so as to

> (f) deprive a person charged with a criminal offence of the right to be presumed innocent until proved guilty according to law in a fair and public hearing by an independent and impartial tribunal...."

The traditional and the statutory requirement of judicial independence became part of our substantive constitutional law by the Canadian Charter of Rights and Freedoms in 1982. Section 11 of the Charter provides as follows:

> Any person charged with an offence has the right
>
> (d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;

These provisions are declared to be "the supreme law of Canada", according to section 52 of the Constitution Act, 1982.

The international law requirement for an independent judiciary is found in the International Covenant on Civil and Political Rights. Article XIV, paragraph 1 of the Covenant provides in part as follows:

> All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

Canada is a party to this Covenant. Canada has also signed the Optional Protocol to the International Covenant on Civil and Political Rights, giving Canadians who claim that this right has been violated, and who have exhausted all available domestic remedies, the further right to appeal to the Human Rights Committee established under the Covenant.

In the exercise of its power, accordingly, the judiciary must be functionally independent of the legislature and executive, and perceived as such. One would not have confidence in a judicial system where the judges were beholden to the executive or to the legislature, or if the other branches of government could exercise discretionary power over individual judges. This is particularly true in the area of criminal law, where the Crown, representing society as a whole, is one of the parties to the action. Some relationships will always exist between the three branches of government, but they must be so ordered to remove, as far as possible, the perception of partiality. The Commission has attempted, in its recommendations, to bear in mind the fundamental principle of judicial independence.

One may wonder what relationship exists between the principle of judicial independence and the Commission's mandate to make recommendations concerning judicial salaries and benefits, but in the Commission's view, there is an important relationship. The

Supreme Court of Canada, in Valente v. The Queen (1985) 24 D.L.R. (4th) 161, considered financial security to be the second essential condition of judicial independence. Le Dain J., on behalf of the Court, stated (at p. 184):

> The essence of such security is that the right to salary and pension should be established by law and not be subject to arbitrary interference by the executive in a manner that could affect judicial independence.

In similar vein, the Universal Declaration of the Independence of Justice, adopted at the First World Conference on the Independence of Justice, Montreal, 1983, quoted in The Queen v. Beauregard (1986) 30 D.L.R. (4th) 481 (S.C.C.), at p. 495, provides:

> 2.21 a. During their terms of office, judges shall receive salaries and after retirement, they shall receive pensions.
>
> b. The salaries and pensions of judges shall be adequate, commensurate with the status, dignity and responsibility of their office, and be regularly adjusted to account fully for price increases.
>
> c. Judicial salaries shall not be decreased during the judges' term of office, except as a coherent part of an overall public economic measure.

Of the necessity for judicial independence, accordingly, there can be no doubt. The issue is the application of the principle to current salary and benefits requirements. The parties appearing before the Commission did not allege that the principle of judicial independence was being violated by Saskatchewan law or practice. The position of the Attorney General was one of support for the principle of judicial independence, and that current compensation levels met any threshold requirements. The Provincial Court Judges' Association based its submission on the principle,

and requested the Commission to bear the principle in mind in arriving at its specific conclusions.

Acceptance of the principle of judicial independence does not rule out difficult problems in its application. Judicial independence is a developing concept; its implications become more apparent as society evolves. What was considered acceptable fifty years ago is no longer so today. Le Dain J., in Valente v. The Queen (1985) 24 D.L.R. (4th) 161, stated that efforts to strengthen judicial independence "may be expected to continue as a movement towards the ideal" (at p. 175).

Some specific decisions exist on what does not violate judicial independence. The fixing of judicial salaries by the executive or by the Legislature is not a violation of judicial independence: Valente v. The Queen (1985) 24 D.L.R. (4th) 161 (S.C.C.). Requiring judges to pay income tax on the same footing as other citizens is not a violation: Judges v. A.G. Sask. (1937) 2 D.L.R. 209, (1937) 1 W.W.R. 508, 53 T.L.R. 464 (P.C.). Nor are pension deductions: The Queen v. Beauregard (1986) 30 D.L.R. (4th) 481 (S.C.C.).

In the recommendations which follow, the Commission has endeavoured to ensure that the principles of judicial independence have been maintained and fostered.

IV. THE WORK OF THE PROVINCIAL COURT

Most of the parties appearing before the Commission emphasized the importance of the work of the Provincial Court, and

drev comparisons between its work and that of other Courts. Because of that importance, it is said that the salary differentials which nov exist between judges of the various courts are unjustified.

The facts certainly establish that the Provincial Court is of the highest significance in our justice system. The Court deals with at least 90% of all civil and criminal matters in Saskatchewan, and at least 95% of all criminal and quasi-criminal matters. It can try almost all criminal offences except murder. Even when cases are heard by superior courts, it conducts the preliminary inquiry to determine whether there is sufficient evidence to put the accused on trial. It hears all provincial and regulatory offences. It hears all cases under The Young Offenders Act, and custody applications. Because of its "small claims" jurisdiction, the Provincial Court hears civil claims to a limit of $5,000, and there is a reasonable expectation that that amount will increase. Reference to the Court as a "Court of inferior jurisdiction" is a historical anomaly, and one of the most inappropriate phrases in the legal lexicon.

The Commission accepts without reservation the importance of the Court as the primary deliverer of justice in Saskatchewan. The Commission finds it impossible to make comparative evaluations between its work and that of other Courts. Hov can one ever measure the work of a Court which deals primarily with the liberty of the subject! It cannot be said to be of lesser or greater importance than of other Courts, because other Courts also exercise roles of great importance. Superior Courts traditionally played a

supervisory role over provincial courts, but that jurisdiction is diminishing. What can properly be said is that all Courts play fundamentally important roles in the well-being of our society.

The Commission is also conscious of the fact that the Provincial Court is the one with which most citizens will come in contact. Most people do not have matters heard before the Court of Queen's Bench. It is even less likely that they will bring a matter before the Court of Appeal. However, most people at some time will appear before the Provincial Court. It is that Court which will affect the public's ideas of law, order, justice and fairness. Its influence is pervasive.

V. SALARIES

The major issue brought before the Commission is that of salaries payable to judges for the three year period commencing October 1, 1990. The present salary of Provincial Court Judges is $90,000. Their submission is that for the year commencing October 1, 1990, the salary be at parity with the salary paid to District Court Judges ($135,500), together with a yearly cost of living increase based on the Industrial Aggregate Index for the following two years. The Judges' submission is based on the proposition that there is an untenable gap between the salaries of federal and provincial Judges which detracts from the worth and importance of the Provincial Court. This gap has widened in recent years, and is not justifiable on rational grounds. Counsel argued that the public's perception of the worth of a judge is based in part on his

salary, and a lover salary is damaging to the morale of the Court. It is also contended that salaries must be sufficient to attract leading members of the Bar.

The position of the Judges' Association was supported by the Criminal Defence Lawyers' Association. Its position was that federal judicial salaries were reasonable, and that federal and provincial salaries should be merged. Different salaries led to a different public perception of competence and quality. It also pointed out that in one day a Provincial Court Judge might make many "life-altering decisions", and that only the most qualified individuals should be entitled to make such decisions.

The Canadian Bar Association, Saskatchevan Branch also supported parity of salaries as the guiding principle. In its viev, the Provincial Court deals with the most serious criminal matters, and lover salaries are unjustifiable. The workload of the Court is great, and will continue to increase. Thus salaries must be sufficient to continue to attract well-qualified individuals.

The Deputy Attorney General of Saskatchevan, who appeared on behalf of the Attorney General, did not recommend a specific salary level. In his view, the Commission should be guided by the principle of judicial independence, and the salary should be set in a Saskatchevan context, reflecting Saskatchevan's economic climate. He also pointed out that there was a substantial list of well-qualified applicants to the Court.

In considering the appropriate level of salaries for our Provincial Court, it is instructive to look at salaries paid

elsewhere in Canada. The following chart was prepared by the Judges' Association:

	1988	1989	1990
British Columbia	$ 87,826	$ 94,000	$ 98,000
Alberta	$104,560	$104,560	$104,560
Saskatchevan	$ 80,052	$ 80,052	$ 90,000
Manitoba	$ 79,491	$ 85,090	$ 88,607
Ontario	$ 81,510	$105,000	$110,460
Quebec	$ 90,240	$ 90,240	$107,499
New Brunswick	$ 72,852	$ 75,036	$ 89,206
Nova Scotia	$ 68,000	$ 89,000	$ 97,000
Pr. Edw. Island	$ 80,000	$ 85,365	$ 95,989
Newfoundland	$ 67,511	$ 78,215	$ 88,362
Yukon	$ 82,285	$ 89,500	$ 89,500
N. W. Territories	$ 91,000	$ 99,400	$103,873
County (Federal)	$122,700	$127,853	$134,983
Superior (Federal)	$127,700	$133,063	$139,983
Supreme (Federal)	$151,700	$158,071	$166,291

There have already been some changes to the figures shown above. On October 1, 1990, the New Brunswick salary increased to $93,220. The Newfoundland salary increased to $90,129 on January 1, 1991. On April 1, 1991, the Nova Scotia salary will increase to $102,100. It is anticipated that there will be increases in 1991 in the other Provinces as well.

The Commission is unable to accept the proposition that the salaries of Provincial Court Judges should be pegged to that of District Court Judges. Under section 92(14) of The Constitution Act, 1867, the Provincial Legislature has jurisdiction over the administration of justice in the Province, including the organization of Provincial Courts. This jurisdiction involves the setting of salaries for judges of those courts. It would detract from that constitutional responsibility to provide that the

Province automatically follov federal pay schedules. The best judgment from a provincial perspective ought to be exercised.

Adoption of federal pay schedules also presents conceptual difficulties. The federal constituency is different from the provincial. The federal government sets one pay schedule for the entire country, and must achieve a standard acceptable throughout the country. It is concerned with widely different regional areas, and with widely different urban and rural areas. Living costs vary substantially in Canada, as do the incomes of lawyers. The federal judicial salary must surmount all of these variations to achieve acceptance in all parts of the country. Setting a provincial salary does not engage the same constraints.

In establishing any salary level, it does not always follov that the higher salary is the right one, particularly vhen public responsibility is involved. The federal salary may be too high or too low, but it cannot be assumed that it is automatically right. In light of the geographical constraints referred to above, it is to be expected that the federal salary vould be higher than the provincial.

The Commission is supported in its decision to exercise its ovn best judgment from a Saskatchevan perspective by the fact that no other Province has seen fit to adopt the federal salary schedule. The federal level is a helpful indicator, but it should not be determinative.

In the Commission's viev, there are many factors to be considered in arriving at a just salary. In addition to fostering the principle of judicial independence, discussed earlier, one must

consider the dignity of the office, and the responsibility and power exercised by the Court in its daily work. One should consider the stress and emotional drain resulting from the daily grind of life-altering decisions, especially involving the docket or intake court. One should consider the haunting fear of the tragic consequences that even a single mistake can make. The salary must be sufficient to attract competent and admirable appointees; in this regard Saskatchevan has been fortunate. Also relevant is the inability of judges to earn other income. One can also usefully compare judicial salaries in other Provinces as well as federal salaries. Taking all of these factors into account, and realizing that fixing an appropriate salary is more an art than an exact science, the Committee recommends that the salary of Provincial Court Judges for the year commencing October 1, 1990, be set at $104,000.

While this amount may be vieved by some as high, the figure should approximate the 1991 provincial average. The Commission is also cognizant that the Provincial Court is operating efficiently, and has one of the lovest time gaps in the country between arraignment and trial.

The Commission does not attach much weight to the fact that there is a substantial list of vorthy applicants for appointment to the provincial Bench. This is only as it should be. Appropriate salaries should be determined on their intrinsic justification, rather than on economic competition.

The Commission is charged with setting the salaries for the three year period from October 1, 1990. The difficulty increases

as the length of time expands. In the Commission's view, the increase for October 1, 1990 will bring the judicial salary to an appropriate and respectable level. Further increases may legitimately be restricted to cost of living increases. In the Commission's view, the Consumer Price Index is a more appropriate yardstick for Saskatchevan than the Industrial Aggregate Index. It is accordingly recommended that on October 1, 1991 and on October 1, 1992 the salary of the Provincial Court Judges be further increased by the rate of increase in the Consumer Price Index for Saskatchevan (the average of Saskatoon and Regina) for the preceding twelve months from those respective dates.

VI. VACATION LEAVE

At present, the vacation leave for Provincial Court Judges is four weeks. This period is fixed by regulation by the Lieutenant Governor in Council, pursuant to section 25 of The Provincial Court Act.

The Judges Association has requested that the vacation leave period be six weeks, and that any reference to vacation leave be removed from the Act. Under that regime, vacations would be set by the Chief Judge, keeping staffing requirements in mind, and utilizing a bench mark of six weeks vacation leave per year.

The vacation period for Saskatchevan judges is among the lovest for Provincial Court Judges in Canada. It is also lover than that of Provincial Crown Prosecutors. Bearing in mind the stresses of office, the fact that judges are senior lawyers, and

the comparable situation elsewhere, the Commission recommends that the vacation period be set at six weeks.

The Commission does not agree that vacation leave should be deleted from the Act. In the Commission's view, there is an advantage to having the vacation period specified in the Act so that every judge will know what his entitlement is. A specific provision will also reduce the possibility of friction between the Chief Judge and other members of the Court. It is accordingly recommended that The Provincial Court Act be amended to specifically provide that a judge of the Court is entitled to an annual vacation leave of six weeks.

In order to facilitate good organization of the Court's activities, there should be some limitation on the carry over of vacation entitlement. The Attorney General asked for some limitation, and the Judges' Association did not consider this to be a problem. It is accordingly recommended that the amount of vacation leave that can be carried over from one year to the next be limited to one half of the vacation period, or three weeks.

VII. RETIREMENT, PENSIONS, SPOUSAL BENEFITS, LIFE INSURANCE

Pension and retirement matters are always difficult, because the variety of solutions is infinite. The normal complexity is compounded for judges because they are appointed late in life and do not have long periods in which to build up a pension equity. Following retirement, it is difficult for a judge to resume a career in practice.

Judges now contribute to a defined benefit plan at a rate of 5% of their salary. The normal retirement age is 65 years, and pension eligibility comes after 10 years of service. The pension amounts to 3% for each year of service of the average salary received during the last three years of service, to a maximum of 70%. Thus full pension eligibility comes after service of 23 1/3 years.

Pursuant to section 41(2) of the Act, the pension is reduced by the amount of benefits paid under the Canada Pension Plan. The pension is not indexed for inflation increases, but the Commission was informed that pensions have in practice been increased to the extent of 60% of the Consumer Price Index increases and that this practice will continue.

A judge who is 55 years of age or more, and who has served for at least 10 years, may take early retirement, but his pension is reduced by a factor calculated by linear interpolation from a table set out in the Act. The reduction is a substantial one: speaking generally, it amounts to a reduction of approximately 6% for each year remaining to the normal date of retirement.

Judges may participate in a group life insurance plan under which their estate can receive death benefit insurance up to three times salary, subject to a maximum payment of $250,000. An additional payment of $50,000 is payable on accidental death.

In general terms, the present pension plan is a generous one, as, for example, the provision of 3% of salary for each year of service. In the Commission's view, however, there are some

features of the plan which are undesirable and unfair, and which require adjustment. These will be dealt with seriatim.

(a) Pension Eligibility and Early Retirement

The Judges' Association requested that the Act be amended to adopt a "rule of eighty", i.e., that after sixty years of age or more a judge whose combined age and years of service equals eighty can retire with full pension benefits. It further requested that on attaining 55 years of age or more, along with 10 years of service, a judge be entitled to retire with a pension of 3% of salary for each year of service without penalty.

The Commission does not accept either request. In its view, a pension plan should not encourage early retirement unless there are good reasons for it. On the contrary, some feel that a retirement age of 65 is too early, and many people nov oppose any form of mandatory retirement. It is noteworthy that the retirement age of federal judges is 75, although there is a supernumerary system commencing at age 65. Some judges may also have other pension entitlements or Registered Retirement Savings Plans in addition to a judicial pension.

Nevertheless, the Commission agrees that there may be situations where early retirement is justifiable, and where the present provisions become too rigid. A judge may suffer from "burn-out" after long years of service, and yet pension reductions will make early retirement prohibitive. Further service may not even increase the total amount of pension, other than inflationary increases. In such cases, the judge should be entitled to the pension he has earned without excessive reductions. The Commission

accordingly recommends that a judge between 60 and 65 years of age, with at least 15 years of service, be entitled to a pension calculated on the basis of 3% for each year of the average salary during the last three years, to a maximum of 70%, without any reduction. The Commission further recommends that a judge between 55 and 60 years of age, with at least 15 years of service, be entitled to a pension similarly calculated, less a reduction of 5% or proportion thereof for each year remaining to the age of 60.

(b) Pension Contribution

The Judges' Association recommended that the pension plan be non-contributory, similar to Alberta and Prince Edvard Island. Saskatchevan judges nov contribute 5% of their salary.

In the Commission's viev, financial arrangements for judges should not be structured so that they no longer experience the obligations of other citizens. Very fev people, including most judges, receive pension benefits from plans to which they have not contributed. As it nov stands, the contributions are lov and the benefits are high. No change is warranted.

(c) Canadian Pension Plan Benefits

As noted earlier, the judicial pension is reduced by benefits payable under the Canada Pension Plan. The result is ironic, because in some instances the judge should be entitled to benefits because of contributions made prior to appointment to the Bench.

The Judges' Association asked that section 41 of the Act be repealed, and this request was supported by the Attorney General.

The Commission agrees that Canada Pension Plan benefits should not be integrated with the judicial pension, and that section 41 of the Act be repealed.

(d) Group Life Insurance

The Judges' Association asked that the group life insurance plan limits of $250,000 (death benefit) and $50,000 (accidental death) be increased. The Attorney General advised that this could be done without significant cost.

The Commission recommends that the maximum death benefit payable under the group insurance plan be set at $400,000, plus $100,000 in the event of accidental death.

(e) Spousal Death Benefits

Where a judge dies while holding office, section 42(1)(a) of the Act provides for a spousal pension of 35% of the average salary received by the judge during his last three years of service. The Judges' Association requested that the percentage be increased, or, alternatively, that the spousal pension be indexed. The Association also requested that the spouse receive a gratuity equal to two months salary of the deceased judge.

Bearing in mind the recommended increase in the group life insurance maximums, the Commission does not recommend any change to the spousal death benefit. It does recommend, however, that the spouse receive a gratuity equal to two months' salary of the deceased judge. This will assist a surviving spouse to deal with difficult cash flow problems which can arise immediately after death.

For reasons which appear in the next section, no change is recommended for the indexing of pensions. Where a judge dies after retirement, section 42(1)(b) of the Act provides for a spousal pension of 65% of the pension that he was receiving or to which he is entitled. The Judges' Association requested that this spousal pension be indexed, or, alternatively, that it be increased.

The Commission does not recommend any change in this regard.

(f) Indexing of Pensions

The Judges' Association requested that all pensions, including those of surviving spouses, be indexed, similar to the indexing of federal judicial pensions. The Commission was informed that although there is no legal requirement to do so, pensions have in practice been increased by the Provincial Government to the extent of 60% of the Consumer Price Index increases, and that this practice will continue.

The Commission is sympathetic to anyone whose pension benefits are dramatically reduced by the effect of inflation. Nevertheless, it does not feel justified in recommending that pensions be indexed. Inflation should be everyone's responsibility; everyone should have an inducement to keep price increases as low as possible. There are very few pensions that are insulated from the effects of inflation, and in fact the present provincial practice places judicial pensions in a superior category. The present pension plan is a generous one, and the provincial cost of indexing pensions would be enormous.

Accordingly, the Commission does not recommend any change at this time.

VIII. SUPERNUMERARY JUDGES

The Judges' Association has suggested that a supernumerary program, based on the federal model, be implemented for the Provincial Court. Under the federal plan, a judge who has reached the age of 65 years after 15 years of service may elect to hold office as a supernumerary judge, working about three months of the year, but maintaining his full salary. Under the proposed Saskatchewan plan, a judge who has reached the age of 55 years or more, after 15 years of service, could elect to become a supernumerary judge, at full salary, until he reaches the retirement age of 65 years.

The Commission finds it difficult to accept the rationale of a system whereby a judge 55 years of age would receive full pay for working only three months a year. The federal plan can be distinguished on the basis that the normal retirement age is 75 and that the plan commences at age 65, assuming, of course, that the plan can be justified at all. The Commission does not recommend the establishment of a supernumerary system for Saskatchewan.

IX. DISABILITY BENEFITS

Disability benefits are presently covered by section 39 of the Act, providing as follows:

> 39(1) The Lieutenant Governor in Council may, on the recommendation of the minister, grant to a judge who:
>
> (a) on the day of his appointment was less than 60 years of age;
>
> (b) is, in the opinion of the Judicial Council, unable to perform satisfactorily the duties of his office by reason of his having become afflicted with a permanent infirmity; and
>
> (c) on the day on which he resigns or is retired from his office because of that infirmity, has served continuously as a judge for a period of at least one year;
>
> a pension in an annual amount equal to one-half of the salary being received by him during his last year of service, or the amount that he would have received if he had retired with a pension calculated pursuant to section 37 or 38, whichever is the greater.
>
> (2) Where a judge to whom a pension is granted pursuant to subsection (1) is, in the opinion of the Judicial Council, after the holding of any inquiry that the minister considers advisable, able to perform the duties of a judge, the Lieutenant Governor in Council may, on the recommendation of the minister, by order, discontinue payment of the pension for the period and on the conditions stated in the order.

When one analyzes this section, certain flaws immediately become apparent.

(a) Payments are conditional on the consent of the Lieutenant Governor in Council, and require the recommendation of the Minister of Justice. This is a violation of the principle of judicial independence, discussed earlier, since it makes a member of the judicial branch subject to the discretion of the executive branch for receipt of a benefit. This must be changed.

(b) Provision is made only for "permanent infirmity"; there is no provision for temporary disability, and the word "infirmity" may be restrictive.

(c) Payment of benefits is conditional on a judge resigning or retiring from office.

(d) Provision should be made for a judge on disability leave returning to the Bench. The effect of section 39(2) is unclear, and its operation is subject to executive discretion.

The Judges' Association made numerous suggestions for improvement of this section, and the Deputy Attorney General agreed that some of the provisions warranted amendment.

The Commission generally agrees with the suggestions made by the Judges' Association concerning disability benefits, and specifically recommends that section 39 of the Act be amended as follows:

(1) the words "permanent infirmity" should be replaced by the words "temporary or permanent disability, illness or infirmity".

(2) resignation or retirement should not be required for the payment of disability benefits, and the section should make specific provision for a judge on temporary or permanent disability returning to the Bench after his condition has improved.

(3) all decisions concerning the existence of a temporary or permanent disability, or eligibility to return to active service, should be made solely by the Judicial Council.

(4) the benefit payable for permanent disability should be 70% of salary.

(5) the benefit payable for temporary disability should be 100% of salary.

(6) the period of temporary disability should not exceed three months.

(7) upon retirement by a judge who is disabled, his pension should be calculated in the normal manner based on the regular salary received by members of the Court and not on the reduced amount being received by the disabled judge.

X. SABBATICAL LEAVE

In its presentation, the Judges' Association requested that consideration be given to the establishment of a sabbatical leave plan. It specifically proposed that eligibility accrue after ten years of service, that the sabbatical period not be for more than one year, that the Judge receive 70% of his salary during the period of leave, and that leave might be for any appropriate purpose and subject to the approval of the Chief Judge.

There are situations where the Commission deems that a sabbatical leave plan is particularly appropriate. The work of a Provincial Court Judge often is very stressful, and after many years of service a judge may experience a strong need to reflect on what he or she is doing, and to explore alternative methods of achieving desired goals. Alternatively, a judge may wish to upgrade his training and experience by pursuing additional course work or graduate studies. With these aims in mind, some Canadian law schools have established "Judge in Residence" programs, which have proved beneficial to both the judge and the law school.

At the Provincial Court level, only the Northwest Territories has established a sabbatical leave plan. The Province of Saskatchewan does have a Deferred Salary Leave Plan for civil servants, but this plan does not serve the aims which justify a sabbatical leave plan for judges. Under The Provincial Court Regulations, the Minister of Justice may grant a leave of absence to a judge without pay, with pay, or with partial pay, but no

requests have been made, and in any event the provision offends the principle of judicial independence.

The Commission is of the opinion that precise conditions should attach to a grant of sabbatical leave. The leave must be for an educational purpose such as study, research, writing, and similar activities. Leave should be subject to the approval of the Chief Judge, and no other person. In order not to disrupt the organization of the Court, not more than two judges should be entitled to take leave at the same time. The judge taking leave should be expected to return to his regular judicial duties for at least one year following the sabbatical period.

The Commission also thinks that a leave of one year is too long. A judge returning after that time would feel out of touch with his regular work. In the Commission's view, a leave of four months would be appropriate. A four month leave, coupled with holiday time and the possibility of banked holiday time, would allow for a total leave of half a year. Most Universities are organized on a semester basis, and the proposed leave would enable the recipient to pursue a program of studies at most Universities.

The Commission, accordingly, recommends as follows:

(1) the Act or the Regulations be amended to provide for a sabbatical leave program;

(2) sabbatical leave must be for an educational purpose, and is subject to the approval of the Chief Judge;

(3) every judge shall be entitled to apply for leave at the end of every 10 year period of continuous service;

(4) the sabbatical period shall be for a period of 4 months;

(5) the judge shall receive 70% of his salary during the period of leave;

(6) no more than two judges of the Court shall be on leave at the same time;

(7) a judge taking leave shall return to his normal duties for at least one year immediately after the expiry of the leave;

(8) the taking of leave shall not adversely affect the judge's normal entitlement to retirement or pension.

In the Commission's viev, the sabbatical leave plan will not be an expensive item. Because of the loss of income and additional expense to the judge taking leave, not many will apply. Because of the reduced income, it is suggested that the Chief Judge attempt to work out an arrangement whereby a judge receive a portion of his salary as a research grant in order to obtain a tax deduction. In any event, the Commission thinks that any cost of the program will be more than offset by the increased contribution made by judges to the work of the Court on their return, because of their increased knowledge, experience, and feeling of rejuvenation.

XI. INCIDENTAL EXPENSES

Provincial Court Judges presently do not receive any allowance for incidental expenses. The Provincial Government supplies each judge on appointment with a robe and accessories, and also pays for robe replacements, dry cleaning of robes and accessories, annual conferences, and individual texts and subscriptions.

The Commission is of the view that each Judge should receive an annual allowance to cover reasonable expenses ordinarily involved in the proper execution of his duties. This should include such items as individual books and subscriptions, professional memberships, in-Province judicial and professional conferences, and dry cleaning. It should also cover robe replacement, but the initial judicial outfit should continue to be supplied by the Government.

The Commission suggests that a reasonable amount for the annual expense allowance is $1,000. All expenditures should be approved by the Chief Judge. This amount is not intended to cover out-of-Province travel, which should come from separate funds provided by Government, and under the sole jurisdiction of the Chief Judge.

The Commission accordingly recommends that each Judge receive an annual expense allowance of $1,000 to cover robe replacement, books and subscriptions, memberships, dry cleaning, in-Province conferences, and similar incidental expenses, all expenditures to be approved by the Chief Judge.

XII. NORTHERN ALLOWANCE

Two Provincial Court Judges serve in northern Saskatchewan, and often function under unusual difficulties. They presently receive a northern allowance of $2,000 annually, which amount was fixed prior to 1975. The Judges' Association suggested that the northern judges should be entitled to an additional two or three

weeks vacation, and that the northern allowance be increased. The Provincial submission agreed with an increase in the amount of the allowance.

Bearing in mind that the Commission has already recommended an increase in the vacation period of all judges from four to six weeks, the Commission does not recommend any additional vacation period for northern judges. It is of the opinion, however, that the northern allowance should be increased.

The Commission recommends that judges serving in the northern Saskatchevan administration district be paid an annual northern allowance of $5,000.

XIII. SALARY OF THE CHIEF JUDGE AND ASSOCIATE CHIEF JUDGE

Under The Provincial Court Act, the Chief Judge is paid an additional salary of $5,705. The Associate Chief Judge is paid an additional salary of $3,000, although no one has been appointed to that position. In all Provinces of Canada, the salary of a Chief Judge is higher than that of a regular judge, in order to compensate for the additional responsibilities of office. In the present recommendations, the Commission has placed further duties on the office of the Chief Judge.

The Commission recommends that the Chief Judge be paid an additional salary of $7,000, and that the Associate Chief Judge, if any, be paid an additional salary of $3,500.

XIV. TRANSFER OF JUDGES

Certain recommendations were presented to the Commission concerning the opportunity of judges to transfer to different judicial centres in Saskatchevan. In the opinion of the Commission, this is a matter of administration to be decided by the Government of Saskatchevan, in consultation with the Chief Judge. The Commission makes no recommendation in this regard.

XV. QUALIFICATIONS FOR APPOINTMENT

Under section 5(2) of The Provincial Court Act, a person appointed as a judge must have been a member of the Bar for at least 5 years. Eligibility for a federal judicial appointment comes after 10 years at the Bar. The Judges' Association recommended that the minimum qualification for appointment to the Provincial Court be raised to 10 years. This recommendation was supported by the brief of the Canadian Bar Association, Saskatchevan Branch.

The Commission doubts that it has the legislative mandate to deal with this issue. Qualifications for appointment hardly come under the normal meaning of the words "salaries, remuneration and allowances", or "benefits"; only the latter word raises some possibility of argument. Nevertheless, the Commission has decided to express its view on the matter, because of its importance.

The Commission has already referred to the significance of the work of the Court. It daily makes decisions which affect the

liberty and well-being of the people of Saskatchevan. It is vitally important that our judges have the high qualifications necessary to deal with their onerous tasks. In the Commission's viev, five years at the Bar is not sufficient for a lavyer to acquire the experience and maturity desirable in a judge. The Commission is also mindful of the substantial salaries and benefits recommended in this Report.

The Commission recommends that no person be appointed as a Provincial Court Judge without ten years experience at the Bar.

The Judges' Association also suggested that the Court should reflect all segments of society, and that qualified women and members of cultural minorities be given special consideration for appointment. The Commission does not feel empovered to make a specific recommendation, but it agrees with the sentiments expressed, bearing in mind that the overriding consideration for appointment should be that of merit.

XVI. DATE OF RETIREMENT

An individual member of the Court requested that the Commission consider increasing the retirement age from 65 years to 70 years. He pointed out that under the existing Act persons appointed prior to October 1, 1978, may remain on the Court until 70 years of age.

The Commission is sympathetic to anyone wishing to remain on the Bench after a mandatory retirement age of 65 years. Unfortunately, it has not been able to adequately consider the

implications of such a change on other provisions of the Act or to the recommendations contained in this Report. It does not feel justified in making any recommendation at this time for changing the age of retirement, assuming that the issue falls within the legislative mandate of the Commission.

XVII. FURTHER CLARIFICATION

The Commission remains willing to address any relevant issue which is unresolved, or to clarify any matter involved in its recommendations.

XVIII. CONCLUSION

In conclusion, the Commission wishes to express its appreciation to those persons who assisted the Commission in its work.

His Honour Judge J.B.J. Nutting, Mr. S.E. Halyk Q.C., and Mr. Doug K.S. Kalesnikoff presented the Commission with a well-researched brief of the issues. Mr. Brian Barrington-Foote, Q.C., Deputy Attorney General, presented the position of the Government of Saskatchevan with candor and fairness, making specific suggestions for improvements. His Honour Chief Judge B. Patrick Carey and Mr. Gary Brandt were able to provide the Commission with some of the specific information required for its deliberations. Mr. Mark Brayford, on behalf of the Saskatoon Criminal Defence Lawyers Association, Mr. Alan G. McIntyre and Mr.

Aaron Fox, on behalf of the Canadian Bar Association, Saskatchewan Branch, were able to give an independent professional perspective on many of the issues in dispute. We are grateful to all of them.

Dated this 27th day of March, 1991.

All of which is respectfully submitted.

Douglas A. Schmeiser, Q.C., Chairman

Olga Stinson

Gunnar Pedersen

SUMMARY OF COMMISSION RECOMMENDATIONS:

1. Salary

Commencing October 1, 1991, the salary of Provincial Court Judges should be $104,000. On October 1, 1991, and on October 1, 1992, the salary should be increased by the rate of increase in the Consumer Price Index for Saskatchevan (the average of Saskatoon and Regina) for the preceding twelve months.

2. Vacation

The vacation period should be six weeks annually. One-half of that period can be carried over into the succeeding year.

3. Early Retirement

A Judge between 60 and 65 years of age with 15 years of service should be entitled to retire with his earned pension without reduction. A Judge between 55 and 60 years of age with 15 years of service should be entitled to retire with his earned pension less a reduction of 5% for each year remaining to the age of 60 years.

4. Pension Contribution

The pension plan should continue to be a contributory plan.

5. Canadian Pension Plan Benefits

The judges' pension should not be reduced by benefits payable under the Canada Pension Plan.

6. Group Life Insurance

The maximum death benefits payable under the group life insurance plan should be increased to $400,000, plus $100,000 in the event of accidental death.

7. Spousal Death Benefits

There should be no change in the amount of the spousal pension. Where a judge dies while holding office, the spouse should receive a gratuity equal to two months salary.

8. Indexing of Pensions

Pensions should not be indexed for inflation.

9. Supernumerary Judges

A supernumerary program should not be established for the Provincial Court.

10. Disability Benefits

Section 39 of The Provincial Court Act should be amended to provide as follows:

(a) the words "permanent infirmity" should be replaced by the words "temporary or permanent disability, illness or infirmity".

(b) resignation or retirement should not be required for the payment of disability benefits, and the section should make specific provision for a judge on temporary or permanent disability returning to the Bench after his condition has improved.

(c) all decisions concerning the existence of a temporary or permanent disability, or eligibility to return to active service, should be made solely by the Judicial Council.

(d) the benefit payable for permanent disability should be 70% of salary.

(e) the benefit payable for temporary disability should be 100% of salary.

(f) the period of temporary disability should not exceed three months.

(g) upon retirement by a judge who is disabled, his pension should be calculated in the normal manner based on the regular salary received by members of the Court and not on the reduced amount being received by the disabled judge.

11. Sabbatical Leave

A sabbatical leave program should be established for the Court.

12. Incidental Expenses

Provincial Court Judges should receive an annual allowance of $1,000 for incidental expenses.

13. Northern Allowance

The allowance for northern judges should be increased to $5,000. There should not be any increase in the vacation period.

14. Salary of the Chief Judge and Associate Chief Judge

The Chief Judge should be paid an additional salary of $7,000 annually. The Associate Chief Judge should be paid an additional salary of $3,500 annually.

15. Qualifications for Appointment

No person should be appointed as a Provincial Court Judge without ten year's experience at the Bar.

16. Date of Retirement

There should be no change in the provisions for the date of retirement currently found in the Act.